

Exhibit B

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2 -----x
UNITED STATES OF AMERICA

18 CR 204 (NGG)

3 versus

4 KEITH RANIERE, et al,

United States Courthouse
Brooklyn, New York

April 4, 2019

6 Defendants.

11:00 a. m.

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8 TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
9 BEFORE THE HONORABLE NICHOLAS GARAUFI
UNITED STATES DISTRICT JUDGE

10 APPEARANCES

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Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

1 MR. GERAGOS: The 17th works for us.

2 THE COURT: Okay. That's on the in limine motions.
3 What else do we have?

4 MR. AGNIFILO: We have a technical issue that I'll
5 let the Government raise about some discovery that they
6 provided, that we -- that we found and then have to give back,
7 but I'll let the Government brief that one to the Court.

8 MS. PENZA: So Your Honor, as you are aware, we had
9 had an issue regarding one of the discovery devices. When we
10 had initially produced the device, we did not know that there
11 were child pornography images on the device. We retracted all
12 of those. They -- we then -- there was --

13 THE COURT: Were there images in connection with
14 this case on the device?

15 MS. PENZA: Yes, Your Honor.

16 We then -- we then reproduced the device. We did
17 eliminate the folder that had the child pornography; however,
18 there were additional carved deleted files of that -- those
19 same images, I believe the same ones, in other locations on
20 the drive.

21 The FBI is working right now to create a new version
22 of the drive that has removed those deleted images, which we
23 will provide hopefully today to the defendants and receive
24 from them back the original drives that we had. So it's the
25 second drive that we had given them.

1 The Government does want to raise the issue that we
2 put in our -- in our response to the defendant's motion. In
3 particular, there have now been two assertions by defense
4 counsel regarding their ability to prepare on the predicate
5 acts related to child pornography.

6 THE COURT: Yes.

7 MS. PENZA: And so, the Government is obviously
8 concerned by those representations. I understand that this
9 drive is something that they want to provide to their expert.
10 And so given that, we -- that concern is again raised, that
11 they may need additional time to prepare their expert for
12 those additional charges.

13 THE COURT: I see.

14 MS. PENZA: And so we want to make sure that we are
15 proceeding to trial with the defendant and his counsel saying
16 that they are, indeed, prepared to go forward on April 29th,
17 contrary to what they had put in two previous motions.

18 THE COURT: All right. Let me hear from Mr.
19 Agnifilo.

20 MR. AGNIFILO: Yes, Judge.

21 I don't think we ever said that we couldn't be
22 ready. I think the phrase I used is we were going to move
23 heaven and earth to be ready and we're still going to move
24 heaven and earth to be ready.

25 We have a very productive dialogue with the

1 Government around these matters. I think what the Government
2 produced and then needed back was through mere inadvertence,
3 and we caught it. We saw there was something on the drive
4 that should not be in the public sphere.

5 We contacted the Government. We said, we have to
6 give this back to you. We knew that would end up in some sort
7 of a delay in getting the drive, which is an important piece
8 of evidence in terms of these charges that were recently
9 indicted.

10 And here's my request -- and I think the Government
11 will work with us on this because they have been working with
12 us on this -- to the extent that we can front-load whatever
13 reports there might exist that relate to the alleged child
14 pornography charges, that -- getting that that sooner rather
15 than later would be very helpful to us.

16 And so we do have an expert. The expert's been down
17 to the FBI. The Government was very responsive when I asked
18 for dates. They accommodated our dates. Our expert went
19 down. I expect they'll accommodate our other dates.

20 So as long as we're continuing to be as productive
21 as we've been -- and I think that will continue -- I fully
22 expect to be ready for those charges and all the charges on
23 the trial date.

24 So, it's a lot of work. It's a lot of work being
25 done at the last minute, but this is what happens in trials

1 and that's what happening here. And the Government's been
2 accommodating and responsive, and I'm sure we can get it done.

3 MS. PENZA: Your Honor, if I may, frankly, that
4 doesn't -- that doesn't satisfy the Government. It doesn't
5 sound like they're in a place to say right now.

6 And in terms of front-loading the information
7 regarding child pornography, Mr. Agnifilo knows that the
8 alleged victim of the child pornography charges goes
9 throughout this case. I mean, there will be almost -- there's
10 very little evidence in this case that does not relate to that
11 victim.

12 And so, the Government is going to abide by the
13 Court's deadline. We're going to produce everything. But
14 given that, the Government is concerned that we are not
15 hearing a clear statement from Mr. Agnifilo and Mr. Raniere,
16 frankly, that they are ready to go.

17 And given that -- we understand that there are
18 jurors coming in. We do understand that the landscape of this
19 case has changed dramatically, and may continue to change over
20 the coming days.

21 If that is the case, the Government does not
22 anticipate that our trial will last as long as we have
23 previously said to the Court, because we don't believe there
24 will be -- there won't be six defense attorneys
25 cross-examining witnesses, for example.

1 And so given that, the Government, you know, the
2 Government feels that there has not been a representation that
3 they will be ready on April 29th, and the Government believes
4 that it's important to have certainty right now.

5 THE COURT: Well, let me cut to the chase on this.
6 You know, while the Court is reserving judgment for the moment
7 on the pending motions to dismiss and sever, I agree.

8 The Court -- the Court needs to know the answer to
9 the following questions. And this is from each of the four
10 defendants: Are you prepared for trial? Pardon me. Will you
11 be prepared for trial on the second superseding indictment on
12 April 29th, and if not, how much more time do you need to be
13 fully prepared for trial?

14 I think that's a really essential consideration for
15 the Court. The Court wants to honor its objective of going to
16 trial April 29th, but not -- but not if I do not hear a
17 declaration, in effect, from each of the defendants' counsel,
18 on behalf of the defendants, that they're going to be prepared
19 to go to trial on April 29th.

20 So, of course, we'll start with you, Mr. Agnifilo,
21 because I agree with the Government, to the degree that there
22 needs to be an affirmative statement that based on what's in
23 the second superseding indictment, that you -- which is a
24 recent indictment -- that you will still be ready to go to
25 trial.

1 MR. AGNIFILO: I'll be ready to go to trial, and I
2 mean, and I say that because I do need help from the
3 Government. They have been giving me that help. I'm going to
4 need to have my expert going to the FBI. They have been
5 accommodating of that.

6 This little wrinkle with having to give the drive
7 back is not perfectly timed, but we can get through that. I'm
8 told that I'm going to get a new drive soon. Maybe today.
9 That would be wonderful.

10 But I'm going to make it work. I mean, I have an
11 expert on retainer. He's working for us. He's given me an
12 assurance that in his opinion, that he has been doing this for
13 decades, he can get the work done that I need done by the
14 29th. So I expect to be ready for trial.

15 My request -- and maybe I wasn't as clear as I could
16 have been. I know who the person is in the photographs.
17 That's not the point. I just believe that there's going to be
18 some sort of FBI reports in regard to that part of the FBI
19 investigation regarding the photographs, that if we could get
20 sooner rather than later, that would be helpful to me, but I
21 will be ready to go, representing Mr. Raniere on the Court's
22 trial date.

23 THE COURT: Yes, Mr. Geragos?

24 MR. GERAGOS: Thank you, Your Honor. We will be
25 ready to go on the 29th.

1 THE COURT: All right.

2 MS. HARRIS: Yes, Your Honor.

3 You know in our March 22nd letter to the Court, we
4 indicated in connection with our renewal of our motion to
5 sever, enjoining the motion to sever Ms. Bronfman, that we did
6 advise that we were in plea negotiations with the Government,
7 and that the Government had indicated that given the pressure
8 of trial preparation and the fairly abbreviated schedule that
9 we have been on, that additional time would be beneficial to
10 conclude those negotiations.

11 And we'll say, given the Court's denial of the
12 motions that were made by counsel for Ms. Mack for an actual
13 adjournment of the trial date, I think substantial progress
14 has been made.

15 So I think that the Government's in a better
16 position to speak to, you know, that particular issue than --
17 we have, of course, been preparing for trial, but that's the
18 only aspect of this that bears as to Ms. Russell.

19 THE COURT: Yes?

20 MR. BUCKLEY: Yes, Your Honor. Sean Buckley on
21 behalf of Ms. Mack.

22 THE COURT: Yes.

23 MR. BUCKLEY: As the Court is aware, we are the ones
24 who did file a motion for the continuance, and we recognize
25 that Your Honor has denied it. Our motion was to permit us to

1 engage in what have been and what continue to be fruitful
2 discussions regarding potential resolution of this.

3 But other than that, we are similarly situated to
4 Ms. Harris and her client.

5 THE COURT: Well, as to Ms. Russel and Ms. Mack,
6 it's the old story. You need to be able to walk and chew gum
7 at the same time in this business.

8 And we have one defendant who's incarcerated, and so
9 I look very carefully at that kind of request, and I also look
10 at the difficulty of impaneling a jury, since we have already
11 sent notices to 500 potential jurors that I'm going to be
12 interviewing in mid-April, and if I interview them in
13 mid-April and tell them that they're going to have to come to
14 court and try a case in June and July, we're in a much
15 different posture than we would be if we're telling the
16 potential jurors that we're going to start the trial in April.
17 So it creates a complication.

18 But I think that my sense is that all of the
19 defendants can be ready to go to trial. The defendant with
20 the greatest difficulty will be Mr. Ranieri because there are
21 additional charges of significance against him in the second
22 superseding indictment, but I have Mr. Agnifilo's clear
23 declaration that he and his client will be ready to go to
24 trial. And I also have Mr. Geragos, who is a recent addition
25 to Ms. Bronfman's trial team, and he's ready to go to trial.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA, : 18-CR-00204(NGG)

5 Plaintiff , :

6 -against- : United States Courthouse
Brooklyn, New York

7 KEITH RANIERE, et al., :

8 Defendant. : June 13, 2019, Thursday
9:30 a.m.

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10 TRANSCRIPT OF TRIAL
11 BEFORE THE HONORABLE NICHOLAS G. GARAUFI
12 UNITED STATES DISTRICT JUDGE, and a jury

13 APPEARANCES:

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25 Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

1 A Yes.

2 Q For example?

3 A Well, from moving computers across from one computer to
4 another, if you've got a file system that is a very, what we
5 call a young file system, like something we use with floppy
6 disks, they don't actually hold on to all that data because
7 newer file systems can hold modified data, access data, much
8 differently.

9 So sometimes when you move the files across, a
10 creation date would be made, but a last access date wouldn't
11 be created completely. You'd only have a date. So in some
12 ways you can actually modify dates and times as you move
13 across different file systems.

14 Q And that's not something you're able to determine without
15 examining the computers along the way?

16 A Not unless we have them in our hand, no.

17 Q So, for example, in this case, we know there was a Dell
18 Dimension computer?

19 A I don't know that, but if you're telling me.

20 Q Your analysis reflected a path that said Dell Dimension?

21 A Yes, I do.

22 Q And you said there were two other computers?

23 A Two other file paths that indicated other computers.

24 Q Like an Apple?

25 A Like an Apple computer, yes.

1 Q What was the third?

2 A It was another Dell computer.

3 Q And then you mentioned last access date?

4 A Yes, I did.

5 Q And last access date can have many meanings also;
6 correct?

7 A Yes.

8 Q It can mean literally the last time someone accessed it;
9 correct?

10 A Correct.

11 Q And it can also mean the last time it was copied?

12 A A last access date can be moved across one computer to
13 another, but the access date, if they're like devices, would
14 stay. So unless you've actually opened up an item and looked
15 at it, it wouldn't change the last access date.

16 Q So last access doesn't even mean last view?

17 A In some cases, software will change the last access date
18 if you've opened it up. But it's really software dependant.

19 Q So last access date does not necessarily mean last
20 viewed?

21 A Correct.

22 Q But if a file is viewed, it would be reflected in an
23 access date?

24 A If it's opened up?

25 Q Yes.

1 A Depending on what piece of software.

2 Q And in terms of file folders, files can be moved from one
3 folder to another; correct?

4 A Yes.

5 Q And you don't have that information when you examine a
6 hard drive such as this, whether files were moved or not?

7 A Well, between devices, I do not.

8 Q Or even when it was on a Dell Dimension, Dell computer or
9 Apple computer?

10 A No, I do not.

11 Q Does DOS script also impact the file names?

12 A Does what? Excuse me?

13 Q DOS. D-O-S script?

14 A I don't know what you're referring to.

15 Q Your examinations were at different times; correct?

16 A As far as my two examinations here were at two different
17 times, yes.

18 Q With respect to the images that you testified about this
19 morning, Government Exhibits 518, A through U, they're also
20 reflected in your report.

21 You understand my question?

22 A As far as looking at the actual items themselves?

23 Q Let me try to break it down then.

24 So Government Exhibit 518-A through U are like
25 images, printed images?

1 A Okay, yes.

2 Q In addition, you have a report that talks about those
3 images and the data for those images; correct?

4 A Yes.

5 Q And some of those were reviewed with you on direct
6 examination by the prosecutor; correct?

7 A Correct.

8 Q Do you know, without looking at your report, what the
9 file creation date is for each and every one of Government
10 Exhibit 518-A through U?

11 A No, I'd have to see the report itself.

12 Q Then we can do that.

13 MR. der OHANNESIAN: This is Government
14 Exhibit 504-A. I'm going to put it on the screen.

15 (Exhibit published.)

16 Q Starting with -- first of all, can you read it?

17 A The highlighted item?

18 Q Yes, .jpg 150?

19 A Yes, I can.

20 Would you like me to read it out loud?

21 Q Does that help you recall the file creation date for .jpg
22 150?

23 A Yes, it does.

24 Q July 26th, 2003?

25 A Correct.

- 1 Q 151, file creation date.
- 2 A Correct.
- 3 Q Same?
- 4 A 2003.
- 5 Q .jpg 152?
- 6 A Correct.
- 7 Q July 2003.
- 8 .jpg 153, July 2003?
- 9 A Correct.
- 10 Q .jpg 154, creation date of July 2003?
- 11 A Yes.
- 12 Q .jpg 155, creation date of July 26th, 2003?
- 13 A Yes.
- 14 Q .jpg 156, creation date of July 2003?
- 15 A Correct.
- 16 Q .jpg 160, a creation date of July 26th, 2003?
- 17 A Correct.
- 18 Q .jpg 161, creation date of July 26th, 2003?
- 19 A Correct.
- 20 Q .jpg 162, creation date of July 26th, 2003?
- 21 A Correct.
- 22 Q And .jpg 163, a creation date of July 26th, 2003?
- 23 A Correct.
- 24 Q So with respect to .jpg images 150 to 163, they were all
- 25 created, according to your forensic examination, on July 26th,

1 2003; correct?

2 A Yes.

3 Q And in terms of the times, going back, we'll go
4 backwards. That date, 2:05:16, 2:05:16, 2:05:15, 2:05:15,
5 2:05:15, 2:05:14, 2:05:14, 2:05:14, 2:05:13, 2:05:13?

6 A Correct.

7 Q 2:05:12, 2:05:12, 2:05:12, and 2:05:11.

8 So on those, the first set of .jpg images, there was
9 a creation date of July 26th, 2013?

10 A Correct.

11 Q Now, with respect to .jpgs 184 to 191, which you talked
12 about this morning and yesterday, which were also contained in
13 Exhibit 518, do you know what the file creation date was for
14 those messages?

15 A I recall, I thought they were 2003, also.

16 Q Would you know for sure if you looked at --

17 A The report would show it.

18 Q The one we were just looking at?

19 A Yes.

20 Q So this is Exhibit 504-A. This is the second set of
21 images that you testified about with the prosecution. .jpg
22 184 creation date, July 26th, 2003, 2:05 p.m.?

23 185, July 26th, 2003?

24 A Correct.

25 Q 205.

1 .jpg 186, creation date, July 26th, 2003, 2:05 p.m.

2 .jpg 187, file creation, July 26th, 2003, 2:05 p.m.

3 .jpg 188, file creation, July 26th, 2003, 2:05 p.m.

4 .jpg 189, July 26th, 2003, 2:05 p.m.

5 .jpg 190, July 26th, 2003, 2:05 p.m.

6 And the last in this series from 184 to 191, file
7 creation date of July 26th, 2003, at 2:05 p.m.?

8 A Correct.

9 Q So looking at that, it's fair to say that for images 184
10 to 191, they have the same file creation date as .jpg images
11 150 to 163.

12 A Yes.

13 Q And in your opinion, is the metadata that was generated
14 with respect to file creation reliable?

15 A No.

16 Q Is it possible these images were created in 2004?

17 A Yes.

18 Q Is it possible they were created in 2005?

19 A Yes.

20 Q Is it possible they were created in 2006?

21 A You can keep going on what dates. I don't know.

22 Q Right. It could be 2008?

23 A Yes.

24 Q It could be 2010?

25 A Correct.

1 Q Because the file creation metadata is not reliable in
2 this case, according to you; correct?

3 A The file -- the file system metadata for those dates and
4 times are not accurate.

5 Q That issue has nothing to do with how you may have
6 conducted your examination; is that correct?

7 A Correct.

8 Q And these images which form the basis of the photographs
9 which were displayed today, also had modified dates on them?

10 A Yes, they did.

11 Q And do you remember what the modified date was for .jpg
12 images 150 to 163?

13 A If I recall, it came back to a 2005 date.

14 Q Okay. And with respect to .jpg images 184 and 195, do
15 you recall what the file modified date was?

16 A I think they call came back to 2005.

17 Q And then did you determine in your analysis file access
18 dates?

19 A No, I did not.

20

21 (Continued on following page.)

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1 A Which -- which metadata are you specifically --

2 Q The date accessed.

3 A You're talking from the file system?

4 Q I'm talking about the data that we just looked at.

5 A That file system data appears to have been changed.

6 Q When we say "changed," it was changed while it was in the
7 possession of the FBI?

8 A If I'm taking the dates on when we received it, it would
9 appear so.

10 Q And the dates that you received just now came from your
11 report, correct?

12 A Yes.

13 Q That you generated as evidence in the case against --
14 United States against Keith Raniere, correct?

15 A Yes.

16 Q The goal of forensic examination is to preserve the
17 electronic data, so that the metadata doesn't change, correct?

18 A Correct.

19 Q Do you know the name of the person who accessed the SD or
20 media card, Exhibit 524, on September 19, 2018?

21 A No, I do not.

22 Q Do you have any record in any piece of evidence or notes
23 that reflects the accessing of Government Exhibit 524 by any
24 representative of the FBI on September 19, 2018?

25 A No, I do not.

1 Q Based on your forensic examination of the Western Digital
2 drive, or Government Exhibit 524, do you have any digital
3 evidence that Keith Raniere knew the content of any of the
4 electronic images on either Government Exhibit 503 or 524?

5 A I don't know Mr. Raniere, so I would never know what he
6 knows.

7 Q Do you have any -- based on your forensic examination, do
8 you have any digital evidence as to the identity of any
9 individual who at any time may have accessed any information
10 on the Western Digital hard drive?

11 A I do not know.

12 Q Based on your forensic examination, do you have any
13 digital evidence of the identity of any individual who may
14 have accessed any electronic information on Government
15 Exhibit 524?

16 A I don't know who had access to this.

17 Q And based on your forensic examination of Government
18 Exhibit 503 or 504, do you know the identity of any person who
19 took any particular image about which you have testified
20 before this grand jury -- before this jury?

21 A I just know people's pictures that are in the images,
22 that's it.

23 Q You don't know the identity of any person who would have
24 been behind the camera at any particular time --

25 A No.

1 Q -- fair to say?

2 A Fair.

3 MR. der OHANNESIAN: Nothing else, Your Honor.

4 Thank you.

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6 (Continued on the following page.)

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